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TITLE 39

MILITIA AND ARMORIES

Chapter

1. State Militia.
2. State Armory Board.
3. Governmental Employees in Military Service.
4. Utah State Defense Force Act.
5. Civil Defense.
6. Utah Code of Military Justice.

CHAPTER 1

STATE MILITIA

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39-1-1. Militia — How constituted — Persons exempted.

(1) All able-bodied citizens, and all able-bodied persons of foreign birth who have declared their intention to become citizens, who are 18 years of age or older, and younger than 45 years of age, who are residents of this state, constitute the militia, subject to the following exemptions:

- (a) persons exempted by laws of the United States;
 - (b) persons exempted by the laws of this state;
 - (c) all persons who have been honorably discharged from the army, air force, navy, or volunteer forces of the United States;
 - (d) active members of any regularly organized fire or police department in any city or town, but no member of the active militia is relieved from duty because of his joining any volunteer fire company or department;
 - (e) judges and clerks of courts of record, state and county civil officers holding office by election, state officers appointed by the governor for a specified term of office, ministers of the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails, conductors, brakemen, flagmen, engineers and firemen of railways, and all other employees of railways actually employed in train service; and
 - (f) idiots, lunatics, and persons convicted of infamous crime.
- (2) All exempted persons, except those enumerated in Subsections (a) and (f), are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after they have voluntarily enlisted in the National Guard of this state.

History: L. 1917, ch. 99, § 1; C.L. 1917, § 3826; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-1; L. 1963, ch. 61, § 1; 1988, ch. 210, § 1.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, designated the previously undesignated first paragraph as Subsection (1); deleted "male" before "citizens" and substituted "persons" for "males" in the introductory phrase of Subsection (1); designated former Subsections (1) to (6) as Subsec-

tions (1)(a) to (f); designated the previously undesignated second paragraph as Subsection (2); and made minor stylistic changes throughout.

Cross-References. — Constitutional provisions as to militia, Utah Const., Art. XV, Secs. 1, 2.

Military as subordinate to civil power, Utah Const., Art. I, Sec. 20.

Utah State Defense Force, militia to supplement if necessary, § 39-4-1.

Voters exempt on election day, Utah Const.,
Art. IV, Sec. 4.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military,
and Civil Defense § 30 et seq.

C.J.S. — 57 C.J.S. Militia § 7.
Key Numbers. — Militia ⇌ 3.

39-1-2. Divided into National Guard and unorganized militia.

The militia of this state shall be divided into two parts: the National Guard and the unorganized militia. The National Guard shall consist of a department for army and a department for air with a general officer at the head of each department and such units as may be allocated to the state. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state. The unorganized militia shall consist of all members of the militia not members of the National Guard.

History: L. 1917, ch. 99, § 2; C.L. 1917,
§ 3827; L. 1931, ch. 23, § 2; R.S. 1933 & C.
1943, 54-1-2; L. 1963, ch. 61, § 2.

Compiler's Notes. — Federal laws relating

to the National Guard may be found in Title 32
of the United States Code.

Cross-References. — Utah State Defense
Force, § 39-4-1 et seq.

39-1-3. Governor commander in chief — Powers and duties.

The governor by virtue of his office shall be commander in chief of the National Guard and of the unorganized militia, and of any portions of the unorganized militia which may hereafter be organized. He shall be empowered and authorized to issue all such orders, rules and regulations necessary to conform the Utah National Guard to the National Defense Act in its organization, government, discipline, maintenance, training, equipment and regulations. He shall appoint and commission all officers and select all warrant officers, subject to the provisions of the National Defense Act; provided, that any such appointee failing to receive federal recognition after having been so notified by the National Guard Bureau, shall revert to status occupied before such appointment. He shall determine and fix the home station and location of the various units of the Utah National Guard. He shall provide armories, warehouses, maintenance and repair shops, hangars, small arms, artillery and aircraft ranges, camp-sites, concentration areas, training facilities, military reservations and arsenals as required for organizations of the Utah National Guard; and shall furnish suitable offices, or office space for regular army personnel assigned to duties with the Utah National Guard; the expenses of which may be paid out of the state military appropriations.

History: L. 1917, ch. 99, § 3; C.L. 1917,
§ 3828; R.S. 1933 & C. 1943, 54-1-3; 1953, ch.
63, § 1.

Cross-References. — Governor as com-
mander-in-chief, Utah Const., Art. VII, Sec. 4.

COLLATERAL REFERENCES

Utah Law Review. — Note, The State University's Place Among Overlapping Police Jurisdiction During a Student Mass Disturbance, 1971 Utah L. Rev. 474.

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense §§ 35, 36.

C.J.S. — 57 C.J.S. Militia § 10.

39-1-4. Staff of commander in chief.

The staff of the commander in chief shall consist of the adjutant general, the assistant adjutant general for army and the assistant adjutant general for air and such other members as he shall choose from the officers of the National Guard or active officers of the United States Army or United States Air Force detailed on duty with the militia of the state. The members of the staff shall serve as such without pay from the state.

History: L. 1917, ch. 99, § 3; C.L. 1917, § 3829; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-4; L. 1963, ch. 61, § 3.

COLLATERAL REFERENCES

Key Numbers. — Militia ⇌ 7.

39-1-5. Governor may call guard into active service — Authority.

(1) The governor may order into active service the National Guard or the unorganized militia or portions of either as he finds necessary.

(2) If it is necessary to order into active service any members of the unorganized militia, the governor may adopt methods he finds most expedient for that purpose, and may prescribe and enforce uniform rules for the conduct of drafts, appoint all officers necessary, and fix the amount of their pay, not to exceed the rate of pay prescribed for the National Guard.

History: L. 1917, ch. 99, § 4; C.L. 1917, § 3830; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-5; L. 1988, ch. 210, § 2.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the subsection designations (1) and (2); deleted "shall have power, in case of insurrection or invasion or imminent war or in case of tumult or riot or

public disaster, or when it clearly appears that the civil authorities are unable to preserve order, on in case of the imminent danger of occurrence of any of said events, to" following "governor" in Subsection (1); and made minor stylistic changes throughout.

Cross-References. — Governor's power to call out militia, Utah Const., Art. VII, Sec. 4.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense §§ 35, 36.

C.J.S. — 57 C.J.S. Militia § 21.

Key Numbers. — Militia ⇌ 15.

39-1-6. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-6, Utah Code Annotated 1953, relating to penalty for failure to appear on order, effective April 25, 1988.

39-1-7. Muster of unorganized militia.

Members of the unorganized militia called into the service of this state shall be mustered into service for such a period, not to exceed the period of one enlistment in the National Guard, as the governor shall deem necessary. Militia so mustered into service shall be organized into units as provided by the rules and regulations governing the regular army of the United States, or as otherwise provided by law.

History: L. 1917, ch. 99, § 7; C.L. 1917, § 3822; R.S. 1933 & C. 1943, 54-1-7. governing the regular army of the United States, see Title 10 of the United States Code.
Compiler's Notes. — For federal statutes

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 21.
Key Numbers. — Militia ⇌ 15.

39-1-8. Governor may proclaim martial law.

Whenever the militia or any portion thereof, is called into active service, the governor may, by proclamation, declare all or any part of any county, city or town in which the troops are serving to be under martial law, and when the militia shall be on active service as herein provided, the commanding officer thereof and his subordinates may co-operate with the civil authorities or take entire charge of the situation as in the judgment of the commanding officer the exigencies of the case may require.

History: L. 1917, ch. 99, § 8; C.L. 1917, § 3833; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-8.
Cross-References. — Disaster response and recovery, state of emergency, governor as commander-in-chief, § 63-5a-5.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 200 et seq.

39-1-9. National Guard subject to call by United States.

(1) The National Guard of this state is at all times subject to the call of the President of the United States. When called into the service of the United States, it is governed by the applicable laws and military regulations of the United States.

(2) The National Guard and its members shall attend drills, encampments, and maneuvers as the president directs.

History: L. 1917, ch. 99, § 10; C.L. 1917, § 3834; R.S. 1933 & C. 1943, 54-1-9; L. 1988, ch. 210, § 3.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the subsection designations (1) and (2); deleted "or the

secretary of war shall direct" following "president" in Subsection (2); deleted a last sentence which read "The discipline in the National Guard shall at all times conform to that provided by the laws of the United States"; and made minor stylistic changes throughout.

39-1-10. Unorganized militia in service, how governed.

All unorganized militia called into service shall be governed as herein provided for the National Guard, unless otherwise provided by law.

History: C.L. 1917, § 3835; R.S. 1933 & C. 1943, 54-1-10.

39-1-11. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-11, Utah Code Annotated 1953, relating to civil and criminal liability of militia members, effective April 25, 1988.

39-1-12. Adjutant general — Appointment — Term — Duties.

(1) (a) There shall be one adjutant general appointed by the governor. The adjutant general is chief of staff and holds office for a term of six years, unless terminated by resignation, disability, or for cause as determined by a military court or court-martial.

(b) The person appointed to the office shall be a citizen of Utah and meet the requirements provided in Section 110, Acts of Congress, approved June 3, 1916. He shall be a federally recognized commissioned officer of the National Guard of the United States with no fewer than ten years commissioned service in the Utah National Guard. Active service in the armed forces of the United States may be included in this requirement, if the officer was a member of the Utah National Guard when he entered that service. An officer is no longer eligible to hold the office of adjutant general after becoming 64 years of age.

(2) (a) He shall perform duties as are imposed by the laws of this state and the United States, and by the rules and regulations of the Department of Defense of the United States. However, if any duties imposed by the statutes of this state at any later time conflict with those imposed by the laws of the United States, the duties imposed by the statutes of this state, as far as they conflict, are abrogated.

(b) He shall keep rosters of all active, inactive, and retired officers and enlisted men of the National Guard, and shall keep in his office all records, orders, regulations, and papers pertaining to the National Guard and the militia of this state. He shall, when he considers it necessary, at the expense of the state purchase or cause to be printed, and issue to members of the National Guard or other persons, copies of the military law, the various orders of the Department of Defense of the United States, and other literature he considers best for the interests of the service.

(c) He shall cause to be prepared all blanks, books, forms, and reports necessary to carry out the provisions of this chapter. The blanks or forms

shall be as identical as possible to those required by the Department of Defense of the United States for use by the regular army or National Guard.

(d) He has, under the direction of the State Armory Board, supervision and charge of all the armories, warehouses, maintenance and repair shops, hangars, small-arms, artillery, and aircraft ranges, campsites, concentration areas, lands, training facilities, and military reservations necessary to the military department of this state. He is responsible for the protection and safety thereof and shall promulgate regulations for the maintenance of order, for the enforcement of regulations as may be ordered for the operation, and the repair, care, and preservation of the facilities and installations belonging to or leased by the state of Utah. He may make further improvement as the good of the service requires.

(e) He shall cause to be prepared all blanks, books, forms, notices, and reports to carry out the provisions of the military laws of this state. The blanks, books, forms, notices, and reports shall be as identical as possible to those required by the Department of Defense for use by the armed forces of the United States.

(f) He shall make and transmit to the federal government the returns required by the laws of the United States and submit to the governor a certified copy. He shall superintend the preparation of all returns and reports required by the United States from the state of Utah on military matters.

(g) He shall act as agent for all active, inactive, or retired members of the National Guard having claims against the United States for pensions, bounty, back pay, or disability arising from any war, federal service, or training. He shall handle the claims without charge.

(h) He shall, on or before January 1 next preceding the general session of the Legislature, make a full and detailed report to the governor of all transactions of his office, including related expenses, for the preceding year, and shall report at other times and on other matters as the governor requires or as he considers advisable.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; L. 1919, ch. 75, § 2; 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-12; L. 1953, ch. 63, § 1; 1988, ch. 210, § 4.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the subsection designations (1)(a), (1)(b) and (2)(a) to (2)(h); substituted "a military court or court-martial" for "courts martial" at the end of Subsection (1)(a); and made minor stylistic changes throughout.

Federal reference. — Section 110, Acts of

Congress, approved June 3, 1916, referred to in Subsection (1)(b), was repealed by Public Law 1028, Chapter 1041, approved August 10, 1956. The later act revised Titles 10 and 32 of the United States Code.

Compiler's Notes. — For federal provisions relating to recognition of officers and state adjutants general, see respectively 32 U.S.C. §§ 305 to 310 and 314.

Cross-References. — State Armory Board, § 39-2-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense §§ 149, 155.

C.J.S. — 57 C.J.S. Militia § 11.

Key Numbers. — Militia ⇌ 7.

39-1-12.5. Adjutant general — Convening authority for military court.

(1) The adjutant general of the state is the convening authority for any military court in the state. Upon receipt of charges, as outlined in the Utah Manual for Military Courts, he may:

- (a) dismiss any charges;
- (b) forward charges to a subordinate commander for disposition; or
- (c) refer charges to a military court for trial, after first directing a pretrial investigation under Section 39-6-25.

(2) The military court shall be convened under the Utah Manual for Military Courts.

History: C. 1953, 39-1-12.5, enacted by L. 1988, ch. 210, § 5.

Effective Dates. — Laws 1988, Chapter 210 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. — Utah Manual for Military Courts, adjutant general to issue, § 39-1-38.5.

39-1-13. Adjutant general — As disbursing and property officer.

The adjutant general shall be [the] disbursing and property officer for the state, expending state funds allocated to the National Guard through the finance department [Division of Finance] according to established procedures.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-13; L. 1963, ch. 61, § 4.

Division of Finance. — The provisions cre-

ating a department of finance were repealed by Laws 1981, Chapter 257, which also created a Division of Finance within the Department of Administrative Services. See § 63-1-12 et seq.

39-1-14. Adjutant general — Drawing vouchers for property damage.

The adjutant general shall, with the approval of the governor, draw vouchers on the state appropriation for the National Guard, payable to the United States, to cover any damage to the United States property charged to the state, when such damage shall have been properly adjudged to be payable by the state.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-14.

39-1-15. Adjutant general — Disposition of unserviceable property.

All military property of the state, which after proper inspection shall be found unserviceable, shall, under the direction of the governor, be disposed of by the adjutant general at public or private sale as he may deem advisable; provided, that where such property shall be deemed by the inspecting officer to exceed \$50 in value, such sale shall be made after ten days' notice in a newspaper published in the county where such sale is to be made; and if such

unserviceable property shall be found by the inspecting officer to be of no actual value, it shall be destroyed under the direction of the adjutant general.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-15.

39-1-16. Adjutant general — Rendering accounts.

The adjutant general shall from time to time, render a true account to the governor of the sales made by him, and, under the direction of the governor, expend the proceeds of the same for other military property.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-16.

39-1-17. Adjutant general — Custodian of military trophies.

The adjutant general shall have charge of, and shall carefully preserve, the colors, flags, guidons and military trophies of war belonging to the state, and shall not allow the same to be loaned out or removed from their proper places of deposit, and shall also be the custodian of and preserve all military documents and records of every nature, which may be placed in his charge, relating to the Indian wars within the state or wars in which the United States has participated.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-17.

Cross-References. — Indian war records, § 63-15-1 et seq.

39-1-18. Assistant adjutant general for the army — Assistant adjutant general for air — Officer for permanent duty as personnel officer.

There is hereby authorized an assistant adjutant general for the army and an assistant adjutant general for air. The adjutant general with the approval of the governor may detail the assistant adjutant general for the army or the assistant adjutant general for air for permanent duty at his office. He shall be a federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of the state of Utah or of the United States, at least three of which shall have been commissioned in the National Guard of Utah and who shall have reached the grade of field officer. He shall hold office at the pleasure of the adjutant general. He shall devote all of his time during office hours of the military department to the duties of his office. The adjutant general, with the approval of the governor, may detail one officer of the Utah National Guard for permanent duty as the personnel officer. He shall be a federally recognized commissioned officer of the Utah National Guard with not less than three years military service in the armed forces of the state of Utah or of the United States, one of which shall have been commissioned in the National Guard of Utah. He shall hold office at the pleasure of the adjutant general. The duties of the personnel officer shall be such duties as the adjutant general may direct, to include the

normal duty of the staff G-1 and G-2. He shall function as a state recruiting officer and also as a state public relations officer and shall devote all of his time during the office hours of the military department to the duties of his office.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-18; L. 1953, ch. 63, § 1; 1955, ch. 64, § 1; 1957, ch. 69, § 1; 1961, ch. 77, § 1; 1963, ch. 61, § 5.

Compiler's Notes. — Federal recognition of National Guard officers is provided for in 32 U.S.C. §§ 305 to 310.

39-1-19. Clerical assistance.

The adjutant general may employ such clerical assistance as shall be necessary to perform the duties of his office and such clerical assistance shall also be available for use in any state office held by the adjutant general.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-19.

39-1-20. Repealed.

Repeals. — Section 39-1-20 (L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-20), relating to the detailing of enlisted

men to permanent duty, was repealed by Laws 1955, ch. 46, § 1.

39-1-21. Adjutant general — Salary — Bond.

The adjutant general shall receive a salary fixed by the Legislature. He shall give an official bond to the state in the penal sum of \$10,000.00 to cover all duties imposed and offices conferred by law or authority on the adjutant general. He shall devote all of his time during the office hours of the military department to the duties of his office.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933, 54-1-21; L. 1941 (2nd S.S.), ch. 11, § 1; C. 1943, 54-1-21; L. 1953, ch. 63, § 1; 1955, ch. 64, § 1; 1957, ch. 69, § 1; 1961,

ch. 77, § 1; 1963, ch. 62, § 1.

Cross-References. — Official bonds, § 52-1-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense §§ 161, 164.

C.J.S. — 57 C.J.S. Militia § 11.

Key Numbers. — Militia ⇌ 11.

39-1-22. Caretakers.

The adjutant general may when necessary, with the approval of the governor, employ such custodians, assistants and common labor as may be necessary to maintain the property, both state and federal, under his care in a proper state of repair.

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-22.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 11.
Key Numbers. — Militia ☞ 7.

39-1-23. Seal of adjutant general.

The seal of the adjutant general shall be circular in form, containing an inner circle; within the inner circle shall be a shield with "Utah" impressed thereon, and between the circles shall be impressed "National Guard, Adjutant General."

History: L. 1917, ch. 99, § 12; C.L. 1917, § 3837; R.S. 1933 & C. 1943, 54-1-23.

39-1-24. Duties of assistant adjutants general.

The assistant adjutant general detailed for permanent duty shall serve in the office of the adjutant general, and aid him by performing such duties as the adjutant general may assign to him. In the absence or disability of the adjutant general he shall perform the duties of the adjutant general. The assistant adjutant general not detailed for permanent duty in the office of the adjutant general shall aid him by performing such duties as the adjutant general may assign him, and he shall serve in such position without pay from the state.

History: C.L. 1917, § 3839x, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-24; L. 1963, ch. 61, § 6.

Cross-References. — Assistant adjutants general authorized, § 39-1-18.

39-1-24.5. Staff judge advocate — Appointment — Duties.

The adjutant general shall appoint a state staff judge advocate who shall be the principal military legal advisor. He shall, in connection with rendering legal advice to the adjutant general, prepare a pretrial advice, post-trial review, and act as legal advisor to the adjutant general on all matters involving military justice, the Utah Manual for Military Courts, and the Utah Code of Military Justice.

History: C. 1953, 39-1-24.5, enacted by L. 1988, ch. 210, § 6.

Effective Dates. — Laws 1988, Chapter 210 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. — Utah Code of Military Justice, Chapter 6 of this title.

Utah Manual for Military Courts, adjutant general to issue, § 39-1-38.5.

39-1-25. Property and fiscal officer of the United States for Utah.

The governor shall designate an officer of the National Guard, subject to the approval of the Department of the Army or the Department of the Air Force, as property and fiscal officer of the United States for Utah. Such officer shall have had actual service in the forces of the United States or the National Guard, and have knowledge of army or air administration. Such officer shall

receive and account for all funds and property belonging to the United States in the possession of the National Guard, and shall make such returns and reports concerning the same as may be required by the National Guard Bureau. Such officer shall render, through the National Guard Bureau, such accounts of federal funds entrusted to him for disbursement as may be required by the Treasury Department. Before entering upon the performance of his duties as property and disbursing [fiscal] officer he shall be required to give good and substantial bond to the United States, the amount thereof to be determined by the National Guard Bureau, for the faithful performance of his duties, for the safekeeping and proper disbursing of the federal property and funds entrusted to his care.

History: C.L. 1917, § 3839x1, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-25; L. 1963, ch. 61, § 7.

Compiler's Notes. — For federal requirements for property and fiscal officers, see 32 U.S.C. § 708.

39-1-26. Assistant quartermaster-general.

The adjutant general may have an assistant quartermaster-general, of grade designated by the governor, who shall perform such duties as may be specified by the adjutant general.

History: C.L. 1917, § 3839x2, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-26.

39-1-27. Bonds of accountable officers.

All accountable and/or responsible officers of the militia shall give good and sufficient bonds to the state of Utah, in such form and amount as the adjutant general shall determine, conditioned for the faithful performance of their duties. If surety-company bond be required to be given, the premium therefor shall be paid out of the fund appropriated for the National Guard. The adjutant general may require a new bond to be given, if in his opinion the surety upon any existing bond has become insufficient.

History: C.L. 1917, § 3839x3, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-27.

Cross-References. — Official bonds, § 52-1-1 et seq.

39-1-28. Loss of property — Liability.

Whenever it shall have been finally determined in the manner provided by law or regulation by action of the departments of the army or the air force, that the loss, damage or destruction of federal property for which any officer shall be responsible or accountable shall have been occasioned by or through the failure of any officer to perform the duties required of him by law or regulation; or when it shall have been finally determined, in the case of state property, by the adjutant general that any state property for which any officer shall be accountable or responsible shall have been lost, damaged or destroyed by or through the failure of any officer to perform the duties required of him by law or regulation, such determination by the departments of the army or the air force or adjutant general, as the case may be, shall be prima facie

evidence against such officer and his sureties of such failure, and the record of such determination, properly authenticated under the seal of the adjutant general, shall be admissible in evidence for the purpose of establishing such failure and such determination in any action against any officer and/or his sureties.

History: C.L. 1917, § 3839x4, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-28; L. 1963, ch. 61, § 8.

39-1-29. Organization of National Guard controlled by federal law.

The organization of the National Guard, including the composition of all units thereof, shall be such as is or may hereafter be prescribed for this state by federal law. The location of units including headquarters shall, when not otherwise prescribed by federal law, be fixed by the governor on the recommendation of the adjutant general.

History: L. 1917, ch. 99, § 15; C.L. 1917, § 3840; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-29.

Compiler's Notes. — For federal laws relating to the National Guard, see Title 32 of the United States Code.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense §§ 30, 31.

C.J.S. — 57 C.J.S. Militia § 8.
Key Numbers. — Militia ⇐ 3.

39-1-30. Officers of National Guard — Commissions.

(1) All officers of the National Guard shall be appointed by the governor, subject to the approval of the National Guard Bureau, or subject to approval as prescribed by the laws of the United States or related rules or regulations governing the National Guard.

(2) An officer may not be commissioned unless he successfully passes tests, both physical and mental, as prescribed by the National Guard Bureau, and unless he has taken the oath prescribed by the laws of the United States, is a citizen of the United States, and has been selected from one of the following classes:

- (a) officers or enlisted men of the National Guard;
- (b) officers on the reserve or unassigned list of the National Guard;
- (c) officers active or retired;
- (d) former officers of the United States Army, Air Force, Navy, Marine Corps, or National Guard;
- (e) graduates from the service of the United States military, air, and naval academies, or graduates of schools, colleges, and universities where a course in military science, as prescribed by the National Guard Bureau, is taught under the supervision of an officer of the regular army or regular air force; and
- (f) for the technical branches and staff corps or departments, other civilians as are especially qualified for that duty.

(3) However, officers appointed to staff corps or departments, or other staff positions, including officers of the pay, inspection, subsistence, and medical

departments, shall have had previous military experience, and hold their positions until they shall have reached 64 years of age, unless separated prior to that time by resignation, disability, or for other causes to be determined by a military court, court-martial, or other legally organized board convened for that purpose. Vacancies among these officers shall be filled by appointment as provided in this section.

History: L. 1917, ch. 99, § 15; C.L. 1917, § 3848; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-30; L. 1963, ch. 61, § 9; 1971, ch. 86, § 1; 1988, ch. 210, § 7.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the subsection designations (1), (2)(a) to (f), and (3);

inserted "military court" near the end of the first sentence in Subsection (3); and made minor stylistic changes throughout.

Compiler's Notes. — For federal provisions relating to recognition and oaths, see 32 U.S.C. §§ 305 to 312.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 149 et seq.

C.J.S. — 57 C.J.S. Militia § 11.
Key Numbers. — Militia ☞ 7.

39-1-31. Commissions to officers — Relative rank.

Commissions shall be issued under the seal of the adjutant general, signed by the governor and countersigned by the adjutant general. They may be vacated in such manner as is now or shall hereafter be provided by law in regard to commissions of the regular army or regular air force and the National Guard of the United States. The relative rank of officers of the same grade shall be determined by length of service in that grade, whether continuous or not, and if the length of service of two or more officers is the same, their rank shall be determined by lot.

History: L. 1917, ch. 99, § 15; C.L. 1917, § 3848; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-31; L. 1963, ch. 61, § 10.

39-1-32. National Guard — Enlistment — Qualifications — Discharge.

Any male between the ages of eighteen and forty-five years, who is a citizen of the United States or who has declared his intention to become a citizen, not prohibited by the laws of the state or of the United States, may be enlisted in the National Guard, subject to such physical and other examinations as may be prescribed by the National Guard Bureau. All persons herein named who shall enlist in the National Guard shall take and subscribe the oath provided by the laws of the United States, and upon so doing shall become members of the National Guard for such period as may be prescribed by the laws of the United States, unless sooner discharged. Enlisted men may be discharged as provided by the laws of the United States and regulations of the National Guard Bureau.

History: L. 1917, ch. 99, § 17; C.L. 1917, § 3849; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-32; L. 1963, ch. 61, § 11.

Compiler's Notes. — For federal provisions relating to the enlistment oath, see 32 U.S.C. § 304.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 30.

C.J.S. — 57 C.J.S. Militia § 12.
Key Numbers. — Militia ⇌ 8.

39-1-33. Noncommissioned officers.

The appointment and reduction of noncommissioned officers shall be made in the same manner as in the regular army or the regular air force of the United States.

History: L. 1917, ch. 99, § 25; C.L. 1917, § 3850; R.S. 1933 & C. 1943, 54-1-33; L. 1963, ch. 61, § 12.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 150.

C.J.S. — 57 C.J.S. Militia § 11.
Key Numbers. — Militia ⇌ 7.

39-1-34. Excuse from drill — Furloughs and leaves of absence.

Unless otherwise provided by the laws of the United States or the regulations of the National Guard Bureau, the commanding officer of any troop, battery, group, squadron or other unit shall have power, for good and sufficient reason, to excuse members of his organization from attendance at drill; he shall also have power to grant furloughs and leaves of absence, by and with the consent of the adjutant general.

History: L. 1917, ch. 99, § 26; C.L. 1917, § 3851; R.S. 1933 & C. 1943, 54-1-34; L. 1963, ch. 61, § 13.

39-1-35. State employees in National Guard — Care of dependents when called into service.

If the National Guard of this state is called into the service of the state, the state shall provide for the dependents of state employees who are enlisted members of the National Guard so called into service. The Board of Examiners shall cause an examination to be made into the merits of all cases of alleged dependency, and upon finding that any mother, father, grandfather, grandmother, wife, sister, brother or child of such member of the National Guard, or any or either of them, are dependent upon such member for support, the Board of Examiners shall determine the amount to be paid by the state to any such dependent, and shall cause the state auditor to draw his warrant on the state treasurer for such sum in favor of such specific and determined dependents, payable out of any amounts available for military purposes or for the maintenance and support of the National Guard. If there are not sufficient funds available to pay for the necessary support of all the dependents determined and specified by the Board of Examiners, the funds available shall be prorated among the dependents specified by the Board of Examiners. The

Board of Examiners in specifying the amounts to be paid to such dependents may provide for a payment on a weekly or monthly basis and on such conditions as it may deem best in each particular case.

History: L. 1917, ch. 99, § 27; C.L. 1917, § 3852; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-35; L. 1981, ch. 174, § 1.

Cross-References. — Board of Examiners, Title 63, Chapter 6.

Governmental employees in service, §§ 39-3-1, 39-3-2.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 44.

C.J.S. — 57 C.J.S. Militia § 28.

39-1-36. Reserve member of armed forces — Leave of absence from employment — Liability of employers.

(1) Any member of a reserve component of the armed forces of the United States who, pursuant to military orders, enters active duty, active duty for training, inactive duty training, or state active duty shall upon request, for a period not exceeding four years, be granted a leave of absence from employment.

(2) Upon satisfactory release from the training or from hospitalization incidental to the training, the member shall be permitted to return to the prior employment with the seniority, status, pay, and vacation the member would have had as an employee if he had not been absent for military purposes.

(3) Any employer who willfully deprives an employee who is absent as a member under Subsection (1) of any of the benefits under Subsection (2) or discriminates in hiring for any employment position, public or private, based on membership in any reserve component of the armed forces, is guilty of a class B misdemeanor.

History: C. 1953, 39-1-36, enacted by L. 1988, ch. 210, § 8.

Repeals and Reenactments. — Laws 1988, ch. 210, § 8 repeals former § 39-1-36, Utah Code Annotated 1953, relating to interference

with enlistments, and enacts the present section, effective April 25, 1988.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

39-1-37. Military duties.

Participation in public ceremonies and parades and other duties in the service of the state shall be deemed military duties of the National Guard, and when participated in by the National Guard, or any portion thereof, under instructions of the commander in chief, the expenses and pay incident to the service of the state shall be allowed by the proper auditing officers from the state appropriation for the support of the militia.

History: L. 1917, ch. 99, § 30; C.L. 1917, § 3855; R.S. 1933 & C. 1943, 54-1-37.

39-1-38. Regulations and forms.

The commander in chief may establish and prescribe regulations and forms not inconsistent with law, or regulations governing the National Guard promulgated by the President of the United States, as he considers proper for the use, government, and instruction of the National Guard, and to carry into full effect the provisions of related law. The regulations and forms shall be revised as necessary, and shall be promulgated in orders and compiled as advisable for the information of the National Guard.

History: L. 1917, ch. 99, § 31; C.L. 1917, § 3856; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-38; L. 1988, ch. 210, § 9.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, deleted the final sentence of the section which read "The forces organized as prescribed in this chapter shall be considered in the actual service of this state, and the members thereof shall be subject to military rules and regulations, and all military offenses prescribed therein, such as disobedience of orders, nonattendance at drill, assem-

blies, parades, reviews or encampments, or neglect or nonperformance of such other duties as they may be lawfully called upon to perform or conduct, to the prejudice of good order and military discipline, shall be considered, and they are hereby declared to be, offenses against the general police regulations of the state, and shall be punished by fine or imprisonment, or both, as hereinafter provided" and made minor stylistic changes throughout.

Cross-References. — Governor commander in chief, § 39-1-3.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia §§ 7, 8.

Key Numbers. — Militia ⇌ 3.

39-1-38.5. Utah Manual for Military Courts to be issued — Military court jurisdiction.

(1) The adjutant general shall issue a Utah Manual for Military Courts, that shall include the Utah Code of Military Justice, and shall set forth the procedures, authority, and organization for convening a military court in the state, conducting a pretrial investigation, and conducting post-conviction military court and appellate processes.

(2) The military court shall be equivalent in criminal jurisdiction to a state circuit court. Each offense shall be punishable by incarceration in a county jail for no longer than one year, or a fine of not more than \$2,500, or both.

History: C. 1953, 39-1-38.5, enacted by L. 1988, ch. 210, § 10.

Effective Dates. — Laws 1988, Chapter 210 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. — Circuit court jurisdiction, § 78-4-5.

Utah Code of Military Justice, Chapter 6 of this title.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 24.

39-1-39. Orders for duty — How served.

(1) Orders for duty may be oral or written. Written orders shall be promulgated by the governor or the adjutant general.

(2) Officers and enlisted men may be warned for duty by:

- (a) stating the substance of the order;
- (b) reading the order to the person warned;
- (c) delivering a copy of the order to the person;
- (d) leaving a copy at his last-known place of abode or business; or
- (e) mailing it to the nearest post office.

(3) The warning may be given by an officer or noncommissioned officer.

(4) If any enlisted man warned for duty fails to appear for duty, the officer or noncommissioned officer giving notice or warning shall make a return, containing the name of the person warned, and the time, place, and manner of warning, if required by the officer issuing the order. The return may be verified by his oath, which may be administered by any commanding officer. The verified returns are evidence on the trial of any person returned as a delinquent, of the facts stated in the return.

History: L. 1917, ch. 99, § 32; C.L. 1917, § 3857; R.S. 1933 & C. 1943, 54-1-39; L. 1988, ch. 210, § 11.

Amendment Notes. — The 1988 amend-

ment, effective April 25, 1988, added the subsection designations (1), (2)(a) to (e), and (3); added the second sentence in Subsection (1); and made minor stylistic changes throughout.

39-1-40. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-40, as last amended by Laws

1986, ch. 178, § 23, relating to courts-martial for military offenses, effective April 25, 1988.

39-1-40.5. Utah Code of Military Justice — Procedures — Jurisdiction.

(1) Chapter 6, Title 39, is adopted as the Utah Code of Military Justice, which may also be referred to as the UCMJ.

(2) The UCMJ sets forth offenses which, if committed by personnel of the Utah National Guard serving under this title or Title 32, United States Code, are punishable as the Utah Military Court directs, under regulations made and published under the UCMJ.

(3) The Utah Military Court shall be a court of the state, convened under orders issued by the adjutant general. Judges of the court may issue summons, executions, and other pleadings, that shall be served by county sheriffs, at the expense of the state.

(4) Judgments for fines or forfeitures may be docketed in the same manner as circuit court judgments in each county, and without costs.

(5) Appeals shall be taken in the same manner as appeals from the circuit courts to the Court of Appeals.

(6) Sentences of the Utah Military Court shall be served in a county jail, and the costs incurred by the county shall be paid out of the General Fund of the state.

(7) Certification as counsel for prosecution or defense, or as a judge of the Utah Military Court, is under orders issued by the adjutant general, and is

limited to attorneys who are members of the Utah State Bar who are serving as judge advocates in the Utah National Guard.

(8) A defendant is permitted to retain, at no cost to the state or National Guard, civilian counsel to represent him before the Utah Military Court.

(9) The Utah Military Court may assess fines not exceeding \$2,500, restitution to victims, statutory surcharges, and issue all writs and judgments for the execution of any of them.

(10) When consistent with the Utah Manual for Military Courts, the Utah Rules of Criminal Procedure apply in Utah Military Courts.

History: C. 1953, 39-1-40.5, enacted by L. 1988, ch. 210, § 12.

Effective Dates. — Laws 1988, Chapter 210 became effective on April 25, 1988, pursuant to Utah Const., Art. VI, Sec. 25.

Cross-References. — Judgment dockets generally, § 78-22-1.

Powers to punish not affected by Penal Code, § 76-1-107.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 215 et seq.

C.J.S. — 57 C.J.S. Militia § 20.

Key Numbers. — Militia ☞ 20.

39-1-41. Discharge or dismissal.

A sentence of dismissal from the service or discharge imposed by a military court may not be executed until reviewed by the state staff judge advocate and until approved by the governor.

History: L. 1917, ch. 99, § 34; C.L. 1917, § 3859; R.S. 1933 & C. 1943, 54-1-41; L. 1988, ch. 210, § 13.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, rewrote this section which read "No sentence of dismissal from the service or dishonorable discharge imposed by a court-martial shall be executed until approval by the governor. Presidents of courts-martial and summary-court officers shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such court, a copy of

the charge or charges having been delivered to the accused with such orders; and shall have power to issue subpoenas and subpoenas duces tecum, and to enforce by attachment attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts; and such courts shall have power to issue process in any county within the state."

For present provisions comparable to those deleted from this section, see § 39-1-41.5.

Cross-References. — State staff judge advocate, § 39-1-24.5.

39-1-41.5. Authority of military court judges — Payment of witnesses.

(1) Judges of military courts may:

(a) issue a warrant to arrest an accused person and bring him before the court for trial, when the person has failed to obey a prior summons to appear before the court, and a copy of the charge or information has been delivered to the accused with the summons;

(b) issue subpoenas and subpoenas duces tecum, and enforce by attachment the attendance of witnesses and the production of books and papers;

(c) sentence for a refusal to be sworn or to answer as provided in actions before civil courts; and

(d) issue process in any county within the state.

(2) Witnesses shall be paid in the same manner as in circuit courts.

History: C. 1953, 39-1-41.5, enacted by L. 1988, ch. 210, § 14.

Effective Dates. — Laws 1988, Chapter 210 became effective on April 25, 1988, pursuant to

Utah Const., Art. VI, Sec. 25.

Cross-References. — Witness fees, §§ 21-5-2 et seq., 78-4-19.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense §§ 244 to 246, 252.

C.J.S. — 57 C.J.S. Militia § 24.
Key Numbers. — Militia ⇌ 21.

39-1-42, 39-1-43. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-42, as last amended by Laws 1967, ch. 77, § 1, relating to disposition of fines, and § 39-1-43, Utah Code Annotated

1953, relating to courts of inquiry, effective April 25, 1988. For present provisions relating to disposition of fines and courts of inquiry, see respectively §§ 39-1-56(2) and 39-6-107.

39-1-44. Members of military courts exempt from liability.

No action or proceeding shall be prosecuted or maintained against a member of a military court or officer, or person acting under its authority or reviewing its proceedings, on account of the imposition, approval or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, process or mandate of a military court.

History: L. 1917, ch. 99, § 36; C.L. 1917, § 3861; R.S. 1933 & C. 1943, 54-1-44.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 221.

Key Numbers. — Militia ⇌ 21.

39-1-45. Jurisdiction presumed.

The jurisdiction of the courts established by this chapter shall be presumed, and the burden of proof shall rest on any person attacking such jurisdiction in any action or proceeding.

History: L. 1917, ch. 99, § 37; C.L. 1917, § 3862; R.S. 1933 & C. 1943, 54-1-45.

39-1-46. Arsenal — Military supplies — Loss.

The governor is hereby authorized to provide an arsenal for the storage of arms, equipment and military supplies. Military supplies shall be issued upon requisition of the officer requiring the same. Military supplies for the respective organizations shall be issued to and receipted for by the commanding officer thereof, who shall be responsible to the state for the care and preserva-

tion of the same. Commanding officers shall be responsible to this state for the money value of all property issued to them, which may be lost by reason of carelessness and negligence upon their part.

History: L. 1917, ch. 99, § 38; C.L. 1917, § 3863; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-46; L. 1953, ch. 63, § 1.

Cross-References. — State Armory Board, § 39-2-1 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 39.

C.J.S. — 57 C.J.S. Militia § 18.
Key Numbers. — Militia ⇌ 17.

39-1-47. Military property exempt from civil process.

All military property issued to or owned by members of the National Guard shall be exempt from all civil process.

History: L. 1917, ch. 99, § 39; C.L. 1917, § 3864; R.S. 1933 & C. 1943, 54-1-47.

39-1-48, 39-1-49. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-48, as amended by Laws 1986, ch. 178, § 24, relating to wrongful use of military

property, and § 39-1-49, Utah Code Annotated 1953, relating to policing of grounds for drills and rendezvous, effective April 25, 1988.

39-1-50. Military court — Concurrent prosecutorial jurisdiction with county attorney.

(1) The county attorney of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with the Utah Military Court to prosecute the accused person at the expense of the county.

(2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney has reviewed and declined to prosecute the offense.

History: C. 1953, 39-1-50, enacted by L. 1988, ch. 210, § 15.

Repeals and Reenactments. — Laws 1988, ch. 210, § 15 repeals former § 39-1-50, Utah Code Annotated 1953, relating to county attor-

ney's duty to prosecute for military offenses, and enacts the present section, effective April 25, 1988.

Cross-References. — County attorney's duties, § 17-18-1.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense §§ 280, 284.

C.J.S. — 57 C.J.S. § 20.
Key Numbers. — Militia ⇌ 20.

39-1-51. Pay of National Guard members.

When called into the service of the state and not in the service of the United States, the members of the National Guard shall receive the same pay and allowance as members of the regular army or regular air force of like rank and length of service. In addition to the above pay, officers and enlisted personnel shall receive one ration per day; provided, that this state shall make no payments to members of the National Guard in the case of service for which the United States government makes payment.

History: L. 1917, ch. 99, § 43; C.L. 1917, § 3868; L. 1919, ch. 75, § 3; 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-51; L. 1953, ch. 63, § 1; 1963, ch. 61, § 15.

Compiler's Notes. — For federal provisions relating to pay and allowances of the uniformed services, see Title 37 of the United States Code.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 14.
Key Numbers. — Militia ⇌ 11.

39-1-52. Encampments.

Encampments of the National Guard shall be such as may be provided for by the National Guard Bureau under authority of Congress. The cost of maintenance, transportation and subsistence, and other expenses of such encampments and maneuvers, shall not be paid by the state, but as provided for by Congress.

History: L. 1917, ch. 99, § 43; C.L. 1917, § 3868; L. 1919, ch. 75, § 3; R.S. 1933 & C. 1943, 54-1-52; L. 1963, ch. 61, § 16.

Compiler's Notes. — For federal provisions dealing with appropriations for National Guard activities, see 32 U.S.C. § 107.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 18.
Key Numbers. — Militia ⇌ 16.

39-1-53. Military units not to leave state.

No military unit of the Army or Air National Guard, unless called into the service of the United States, shall leave the state with arms and equipment without the consent of the commander in chief, and any person causing any unit to so leave the state is guilty of a misdemeanor.

History: L. 1917, ch. 99, § 45; C.L. 1917, § 3870; R.S. 1933 & C. 1943, 54-1-53; L. 1963, ch. 61, § 17.

Cross-References. — Governor commander in chief, § 39-1-3.

National Guard subject to call by United States, § 39-1-9.

Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 8.
Key Numbers. — Militia ⇌ 2.

39-1-54. Privilege from arrest or citation — Exceptions.

(1) The members of the National Guard are privileged from arrest or citation by civil authorities during their attendance at drill parades or encampments, or in going to and returning from any of these activities.

(2) This privilege does not extend to arrest or citation for:

- (a) treason;
- (b) any felony;
- (c) breach of the peace;
- (d) operation of a vehicle in a reckless manner or while under the influence of any drug or alcohol; or
- (e) offenses which under state law are class A misdemeanors or greater.

History: C. 1953, 39-1-54, enacted by L. 1988, ch. 210, § 16.

Repeals and Reenactments. — Laws 1988, ch. 210, § 16 repeals § 39-1-54, Utah Code An-

notated 1953, relating to privilege from arrest for National Guard members, and enacts the present section, effective April 25, 1988.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense §§ 297 to 299.

C.J.S. — 57 C.J.S. Militia § 6.
Key Numbers. — Militia ⇌ 2.

39-1-55. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-55, Utah Code Annotated 1953, relating to power to issue process for court-martial, effective April 25, 1988.

For present comparable provisions, see § 39-1-41.5.

39-1-56. Execution of a judgment imposing a fine — Disposition of fines.

(1) (a) When the sentence of a military court includes a fine, and the sentence has been approved by the officer ordering the court, the adjutant general shall issue a warrant for the collection of the fine, directed to the sheriff or any constable of the county where the person against whom the fine is imposed resides.

(b) The officer shall collect the fine in the same manner as he is authorized to collect debts in civil suits, and he shall make returns within 20 days after receiving it, to the adjutant general.

(c) In default of the payment of the fine, or if the officer executing the warrant certifies that there is no property of the defendant out of which to satisfy the warrant, the adjutant general may issue a warrant of commitment, directed to the sheriff or constable, who shall forthwith take the defendant and convey him to the county jail of the county and make return to the adjutant general.

(d) The warrant of commitment for default shall specify the amount in dollars of the fine, and the defendant shall remain in the custody of the keeper or warden of the jail the same number of days as there are dollars of unpaid fine.

(e) Warrants for the collection of fines imposed by military courts, and warrants for commitment for nonpayment of fines, shall be issued by the officer appointing the military court.

(2) All fines collected under this chapter and the regulations governing the National Guard of the United States, unless their disposition is otherwise provided by law, shall be paid to the state treasurer for the credit of the state General Fund.

History: C.L. 1917, § 3872x2, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-56; L. 1988, ch. 210, § 17.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the subsection designations (1)(a) to (e); substituted "military court includes" for "general court-martial shall include" near the beginning of

Subsection (1)(a); added Subsection (2); and made minor stylistic changes throughout.

Cross-References. — Execution of judgment, Rule 69, U.R.C.P.

Failure to levy execution, penalty for sheriffs, § 17-22-14.

Fines imposed by military court, § 39-6-110.

39-1-57. Repealed.

Repeals. — Laws 1988, ch. 210, § 142 repeals § 39-1-57, Utah Code Annotated 1953,

relating to duty of civil authorities, effective April 25, 1988.

39-1-58. Discharge of officers — Efficiency board — Officers in reserve.

(1) While serving on state active duty the moral character, capacity, and general fitness for the service of any National Guard officer may, upon complaint and notice to the officer and a hearing at which the officer and his witnesses may appear and testify, be determined by an efficiency board of three commissioned officers, senior in rank to the officer whose fitness for service is under investigation. The boards shall be appointed by the governor.

(2) If the findings of the board are unfavorable to the officer and are approved by the governor, the officer shall be discharged.

(3) Commissions of officers of the National Guard may also be vacated upon resignation, or absence without leave for three months, upon the recommendation of an efficiency board or pursuant to the sentence of a court-martial.

(4) (a) Officers of the National Guard rendered surplus by the disbandment of their organization shall be placed in the National Guard reserve.

(b) Officers may upon their own application be placed in the reserve.

(5) Boards of efficiency shall be similar to, and possess the same power to compel attendance of witnesses, and shall follow the same form and procedure, as courts of inquiry.

History: C.L. 1917, § 3872x4, added by L. 1931, ch. 23, § 3; R.S. 1933 & C. 1943, 54-1-58; L. 1988, ch. 210, § 18.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the subsection designations (1) to (3), (4)(a) and (b),

and (5); substituted "While serving on state active duty" for "At any time" at the beginning of Subsection (1); added the second sentence of Subsection (1); deleted the second sentence in Subsection (2) which read "Such boards shall

be appointed by the governor"; and made minor stylistic changes throughout.

Cross-References. — Courts of inquiry, § 39-6-107.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 177 et seq.

C.J.S. — 57 C.J.S. Militia § 13.

Key Numbers. — Militia ⇌ 10.

39-1-59. Compensation for injury or death.

If any officer or enlisted person of the National Guard is wounded, injured, or otherwise disabled, or is killed or dies of wounds or injuries received while serving on state active duty, under orders of competent authority and not as a result of his own misconduct, the person, the surviving spouse, children, or any dependent relatives, shall receive from the state relief as the Legislature determines. However, in these cases the member, surviving spouse, children, or any dependent relatives, upon investigation by a board of inquiry appointed by the commander in chief, the findings and recommendations of which shall be filed with the state auditor for the action of the Board of Examiners, shall receive temporary compensation from the state, out of funds appropriated for the maintenance of the National Guard, as determined by the Board of Examiners until the next regular session of the Legislature. This compensation may not exceed the rates of pay provided for officers and enlisted persons in this chapter.

History: L. 1917, ch. 99, § 48; C.L. 1917, § 3873; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-59; L. 1984, ch. 67, § 14; 1988, ch. 210, § 19.

Amendment Notes. — The 1984 amendment substituted "state auditor" for "secretary of state" and made minor changes in style.

The 1988 amendment, effective April 25, 1988, substituted "serving on state active duty" for "doing military duty" in the first sentence and made other minor stylistic changes throughout.

Cross-References. — Board of Examiners, Title 63, Chapter 6.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 44.

C.J.S. — 57 C.J.S. Militia § 22.

Key Numbers. — Militia ⇌ 2.

39-1-60. Laws and regulations of United States control.

(1) The National Guard of this state, the Utah State Defense Force serving under Chapter 4, Title 39, and the unorganized militia are at all times subject to the laws and military regulations of the United States governing them, while serving under Title 32 of the United States Code and the laws and military regulations of the state.

(2) The governor may to prescribe and adopt regulations as necessary to make the laws and military regulations of the United States effective within the state.

History: L. 1917, ch. 99, § 49; C.L. 1917, § 3874; L. 1931, ch. 23, § 2; R.S. 1933 & C. 1943, 54-1-60; L. 1988, ch. 210, § 20.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, rewrote this sec-

tion which read "The national guard of this state and the unorganized militia shall at all times be subject to the laws and military regulations of the United States governing the same, and the governor shall have power at

any time to prescribe and adopt such rules and regulations as may be necessary to make the laws and military regulations of the United States effective within this state."

39-1-61. National Guard Advisory Board.

There is hereby created a National Guard Advisory Board consisting of the adjutant general, battalion and squadron and higher commanders. The purpose of the National Guard Advisory Board is to make recommendations to the adjutant general as to the needs of the National Guard. The board shall meet on call of the adjutant general from time to time as necessary but will meet as a minimum at least once each year. The adjutant general shall be authorized to draw upon military department funds to reimburse members of the board for reasonable expense, including travel incurred in the course of their duties.

History: C. 1953, 39-1-61, enacted by L. 1953, ch. 63, § 2; 1963, ch. 61, § 18.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 10.
Key Numbers. — Militia ⇌ 7.

39-1-62. Group life insurance for members of National Guard.

The lives of a group comprised solely of members of the Utah National Guard may be insured under a policy of group life insurance issued to an association of such members formed for purposes other than obtaining insurance. This association is deemed the policyholder, to insure members of the Utah National Guard for the benefit of persons other than the association or any of its officials, subject to the following requirements:

(1) The premium for the policy shall be paid by the policyholder, either from the association's own funds, or from charges collected from the insured members specifically for the insurance.

(2) No policy may be placed in force unless at least 60% of the members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered.

(3) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the members or by the association. Such amounts may not exceed \$100,000 in the case of any member.

(4) Such insurance policy shall conform to the provisions of the Insurance Code in so far as such code is not inconsistent with the provisions of this section.

History: C. 1953, 39-1-62, enacted by L. 1963, ch. 63, § 1; 1983, ch. 179, § 1.

Cross-References. — Insurance Code, Title 31A.

39-1-63. Scholarship fund for National Guard members — Use and allocation — Appropriation.

(1) There shall be available to individual members of the Utah National Guard scholarships for undergraduate study at post-secondary institutions of learning subject to the following requirements:

(a) The individual must be, at the time he or she receives the benefits, an active member of the Utah National Guard.

(b) The benefit hereunder shall be for tuition only and shall be equal to the resident tuition for the actual course of study engaged in by the individual.

(c) The scholarship shall be payable only to individuals not eligible to receive scholastic financial assistance from the Federal Government by reason of having been a member of the armed forces of the United States.

(2) Scholarships provided hereunder are to be paid by the adjutant general of the state of Utah directly to the institutions involved from the fund appropriated hereunder.

(3) The adjutant general of the state of Utah shall have the power to establish such regulations, procedures, forms, and reports as are necessary to administer the allocation of scholarships and payments of funds under this act.

(4) There is appropriated annually to the adjutant general out of the General Fund the sum of not to exceed \$25,000 as specified in the annual appropriation bill. These funds shall be expended for the granting of scholarships in accordance with this act.

History: C. 1953, 39-1-63, enacted by L. 1975, ch. 117, § 1; 1979, ch. 144, § 1.

Meaning of "this act". — The phrase "this

act," which appears in Subsections (3) and (4), means Laws 1975, Chapter 117, which enacted this section.

CHAPTER 2

STATE ARMORY BOARD

Section		Section	
39-2-1.	Members — A body corporate — Powers.	39-2-6.	Sale of armories and armory premises — Disposition of proceeds.
39-2-2.	Further powers.	39-2-7.	Budget — Annual legislative approval.
39-2-3.	Construction of National Guard armories.	39-2-8.	Borrowing power limited — Board of State Lands and Forestry authorized to lend — Interest rate.
39-2-4.	Order of construction of armories.	39-2-9.	Cities may assist in erecting armories.
39-2-5.	Sale of Bountiful, Beaver and Provo armories — Disposition of proceeds.		

39-2-1. Members — A body corporate — Powers.

The State Armory Board shall consist of the governor, the chairman of the State Building Board, and the adjutant general. It shall be a body corporate with perpetual succession. It may have and use a common seal, and under the name aforesaid may sue and be sued, and contract and be contracted with. It may take and hold by purchase, gift, devise, grant, or bequest real and personal property required for its use. It may also convert property received by gift, devise, or bequest, and not suitable for its uses, into other property so